

Assembly Bill No. 2140

CHAPTER 369

An act to amend Section 368 of, and to add Section 243.25 to, the Penal Code, relating to elder abuse.

[Approved by Governor September 4, 2002. Filed with Secretary of State September 5, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2140, Simitian. Elder abuse.

Under existing law, any willful and unlawful use of force or violence on the person of another is battery, a misdemeanor punishable by a fine of up to \$2,000, imprisonment in a county jail of up to 6 months, or by both that fine and imprisonment. Under existing law, battery on specified classifications of victims, or under specified circumstances, are subject to specified, increased penalties.

This bill would increase the maximum period of imprisonment in a county jail to one year for a battery committed against the person of an elder or a dependent adult, with knowledge that he or she is an elder or a dependent adult.

Under existing law, a person is guilty of a misdemeanor when, under circumstances or conditions other than those likely to produce great bodily harm or death, he or she willfully causes or permits any elder or a dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer unjustifiable physical pain or mental suffering. Under existing law, it is also a misdemeanor for a person, having the care or custody of any elder or dependent adult, to willfully cause or permit the person or health of the elder or dependent adult to be injured or to willfully cause or permit the elder or dependent adult to be placed in a situation in which his or her person or health may be endangered. Under existing law, the maximum punishment for either of these offenses is a fine of \$1,000, 6 months in a county jail, or both that fine and imprisonment.

This bill would increase the maximum punishment for a 2nd or subsequent commission of these offenses to a fine not to exceed \$2,000, imprisonment in a county jail not to exceed one year, or both that fine and imprisonment.

By expanding county jail punishment for the above criminal offenses, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.



Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 243.25 is added to the Penal Code, to read:

243.25. When a battery is committed against the person of an elder or a dependent adult as defined in Section 368, with knowledge that he or she is an elder or a dependent adult, the offense shall be punishable by a fine not to exceed two thousand dollars (\$2,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

SEC. 2. Section 368 of the Penal Code is amended to read:

368. (a) The Legislature finds and declares that crimes against elders and dependent adults are deserving of special consideration and protection, not unlike the special protections provided for minor children, because elders and dependent adults may be confused, on various medications, mentally or physically impaired, or incompetent, and therefore less able to protect themselves, to understand or report criminal conduct, or to testify in court proceedings on their own behalf.

(b) (1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health is endangered, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not to exceed six thousand dollars (\$6,000), or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or four years.

(2) If in the commission of an offense described in paragraph (1), the victim suffers great bodily injury, as defined in Section 12022.7, the defendant shall receive an additional term in the state prison as follows:

(A) Three years if the victim is under 70 years of age.

(B) Five years if the victim is 70 years of age or older.

(3) If in the commission of an offense described in paragraph (1), the defendant proximately causes the death of the victim, the defendant shall receive an additional term in the state prison as follows:

(A) Five years if the victim is under 70 years of age.



(B) Seven years if the victim is 70 years of age or older.

(c) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health may be endangered, is guilty of a misdemeanor. A second or subsequent violation of this subdivision is punishable by a fine not to exceed two thousand dollars (\$2,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

(d) Any person who is not a caretaker who violates any provision of law proscribing theft or embezzlement, with respect to the property of an elder or a dependent adult, and who knows or reasonably should know that the victim is an elder or a dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years, when the money, labor, or real or personal property taken is of a value exceeding four hundred dollars (\$400); and by a fine not exceeding one thousand dollars (\$1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the money, labor, or real or personal property taken is of a value not exceeding four hundred dollars (\$400).

(e) Any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft or embezzlement, with respect to the property of that elder or dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years when the money, labor, or real or personal property taken is of a value exceeding four hundred dollars (\$400), and by a fine not exceeding one thousand dollars (\$1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the money, labor, or real or personal property taken is of a value not exceeding four hundred dollars (\$400).

(f) Any person who commits the false imprisonment of an elder or a dependent adult by the use of violence, menace, fraud, or deceit is punishable by imprisonment in the state prison for two, three, or four years.

(g) As used in this section, “elder” means any person who is 65 years of age or older.

(h) As used in this section, “dependent adult” means any person who is between the ages of 18 and 64, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect



his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. “Dependent adult” includes any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(i) As used in this section, “caretaker” means any person who has the care, custody, or control of, or who stands in a position of trust with, an elder or a dependent adult.

(j) Nothing in this section shall preclude prosecution under both this section and Section 187 or 12022.7 or any other provision of law. However, a person shall not receive an additional term of imprisonment under both paragraphs (2) and (3) of subdivision (b) for any single offense, nor shall a person receive an additional term of imprisonment under both Section 12022.7 and paragraph (2) or (3) of subdivision (b) for any single offense.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

